



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10422400

Date: APR. 22, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a clinical research coordinator, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner had established that her proposed endeavor met the first prong set forth in the *Dhanasar* analytical framework. For the reasons discussed below, however, we must withdraw the Director's conclusion that the Petitioner met the national importance portion of the first prong.

In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner provided the following information:

Part 5 - Additional Information About the Petitioner

Section 3.a. Occupation: Clinical Research Coordinator

Part 6 - Basic Information About the Proposed Employment

Section 1. Job Title: Clinical Research Coordinator

Section 2. SOC Code: 11-9121⁴

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ This standard occupational classification (SOC) code 11-9121.01 corresponds to the occupation of clinical research coordinators. See <https://www.onetonline.org/link/summary/11-9121.01>.

Section 3. Nontechnical Description of Job: Plan, direct, or coordinate clinical research projects. Direct the activities of workers engaged in clinical research projects.

According to the initial “Professional Plan & Statement” (PPS) dated February 7, 2018, the Petitioner’s “career plan in the United States is to work with a health care or research facility to conduct important research on various areas of mental health and provide expert advice and training to other professionals and students in the field.” She further stated that her “knowledge [] will allow [her] to help patients in the United States, by coordinating research in various areas to provide better treatment” and “train other professionals in the field based on the knowledge and skills” she possesses. The PPS also referenced the responsibilities of psychologists, the need for skilled psychologists, and the importance of treating patients. She further states that she will be “helping professionals in the field provide effective treatment plans, while also conducting research to create new techniques and treatments in the field.” The initial support letter indicated that “[i]n her role as a Clinical Research Coordinator,” the Petitioner will:

- Maintain required records of study activity including case report forms, drug dispensation records, and regulatory forms
- Oversee subject enrollment to ensure that informed consent is properly obtained and documented
- Monitor study activities to ensure compliance with protocols and with all relevant local, federal, and state regulatory and institutional policies
- Record adverse event and side effects data and confer with investigators regarding the reporting of events to oversight agencies
- Assess eligibility of potential subjects through methods such as screening, interviews, reviews of medical records, or discussions with physicians and nurses.⁵

After conducting her research in various areas relating to the Psychology field, she will be able to take her finds and train other professionals in the field on proper treatment plans and methods. Based upon her experiences, she will be able to utilize her skills and knowledge to work as a Psychologist⁶ and make contributions of major significance to the mental health community.⁷

In response to the Director’s request for evidence, the Petitioner provided a new PP&S dated October 18, 2019. In it, the Petitioner stated that she “intend[s] to continue using [her] expertise and knowledge working in the field of Psychology” and will “specifically focus[] on consulting, teaching, coaching, researching and studying the areas of Personality Psychology, Organizational Psychology, Applied

⁵ These duties are copied verbatim from the Occupational Information Network (O*NET) at <https://www.onetonline.org/link/summary/11-9121.01>

⁶ We note that, according to the Occupational Outlook Handbook, “[i]n most states, practicing psychology or using the title “psychologist” requires licensure. In all states and the District of Columbia, psychologists who practice independently must be licensed where they work.” The record does not establish that the Petitioner is licensed in the United States.

⁷ Based on the above, it is unclear whether the Petitioner intends to 1) perform her own original research, 2) act as a clinical research coordinator for other scientists’ research and then train others to perform the duties of a clinical research coordinator, 3) work as a psychologist, 4) train other psychologists, or 5) a combination of some, or all, of the listed endeavors.

Behavioral Analysis, Cognitive Psychology and Clinical Psychology.” The PPS reflected a change to her “overall proposed endeavor,” stating it is “to offer my expertise to work as a Research Coordinator, Consultant, and Business Coach, interacting with individuals who play decision-maker roles in the business field to advise them on improving performance and efficiency and maximize results for their companies.” She further indicated that she is a co-owner of two companies⁸ focusing on data science and artificial intelligence and that her “proposed endeavor is to expand the performance of this company [redacted], and continue creating new models of Artificial Intelligence, so that I can solve important questions from companies and other American organizations.” The Petitioner also stated that “in the next 3 years,” she “intend[s] to pursue a doctorate degree in Artificial Intelligence and Personality Theory” and that her “other personal goal is to continue to seek and dedicate time to voluntary work.” Notably, the Petitioner does not provide an explanation for the change in her specific proposed endeavor. Further, given that the new PPS makes only a passing reference to her intention to work as a clinical research coordinator (in addition to consultant, business coach, teacher, researcher, entrepreneur, and student), we are left to question how much time, if any, will be spent on the endeavor described in the initial filing.

As discussed by the Director, the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The information provided by the Petitioner in the response to the Director’s RFE did not clarify or provide more specificity to the proposed endeavor as initially described, but rather changed its focus. For example, the initial description of the proposed endeavor did not address the Petitioner’s intention to focus on artificial intelligence and data science, or the Petitioner’s intention to be an entrepreneur. Rather the initial PPS clearly stated that she intended “to work with a health care or research facility.” Accordingly, the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978); see also *Dhanasar*, 26 I&N Dec. at 889-90.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. Because the Petitioner has not provided consistent information regarding her proposed endeavor, we cannot conclude that she meets either the first or second prong, or that she has established eligibility for a national interest waiver.

⁸ According to the PP&S, the Petitioner opened “a consulting and coaching company in Brazil” in 2013, and the U.S. company in 2019 (after the date of filing) “to help organizations, executives, seniors and health professionals.”

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.